IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.475 OF 2005

Pandurang Rajaram Todkar and Ors. ..Petitioners

Vs.

Kaka Hari Todkar and Ors. ..Respondents

....

Mr.Uday Prakash Warunjikar for Petitioners

....

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 6,2005

P.C.:

1. Heard Mr.Warunjikar, the learned counsel for the Petitioners who are aggrieved by the order passed below Exh.158 in R.C.S.No. 406 of 2000 by the learned Jt.C.J.J.D. at Koregaon on 25.11.2004. By the said application submitted by the defendants nos. 7 to 10, it was sought to frame an additional issue: "Whether the deceased Rajaram Hari Todkar was the exclusive tenant of the suit properties of Gat Nos. 35, 34, 87, 85/11, 87/7, 85/5 and 85/15" and refer it to the tenancy authorities for decision.

2. It is interesting to note that deceased Rajaram Hari Todkar the father of the present petitioners was impleaded as defendant no.1 and on his demise, the

petitioners were brought on record. The suit was initially registered as RCS No.65 of 984. It was subsequently registered as Special Civil Suit No. 469 of 1995 and at the third stage, it came to be registered as RCS No. 406 of 2000.

3. The trial Court noted that the application was moved almost after 18 years and during the lifetime of defendant no.1,he did not take such a plea of tenancy. In addition, no material particulars were provided regarding the commencement of the tenancy, its nature and rate payable etc. It was under these circumstances and by considering the law laid down in the case of *Pandurang Ramchandra Mandlik and Ors. Vs. Smt.Shantabai Ramchandra Ghatge and Ors. [AIR 1989 SC 2240],* the learned Judge of the trial Court has committed gross errors or the reasoning given is manifestly erroneous. This petition under Article 227 of the Constitution of India, must therefore, fail at the threshold.

4. Hence, the petition is rejected summarily.

[B.H.MARLAPALLE,J.]